72-1563

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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-1563

JORDAN C. WAITE, ET AL,

Petitioners

VERSUS

F. P. PLAZA, INC., ET AL,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF GEORGIA

Ferdinand Buckley
Raymond H. Vizethann, Jr.

1515 Peachtree Center South
225 Peachtree Street, N.E.
Atlanta, Georgia 30303

COUNSEL FOR PETITIONERS

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The petitioners Jordan C. Waite, et al.,[1] respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Georgia in this case.

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1. Petitioners consist of Jordan C. Waite, Nancy F. Waite, Dean B. Going, Robin Gray, Alan Burnham, Commodore C. Going, Jr., Eugene C. Cotton and Lorraine H. Cotton, and all other residents and property owners of DeKalb County, Georgia, similarly situated.

(continued on next page)

CITATIONS AND OPINIONS BELOW

The opinion of the Supreme Court of the State of Georgia printed in Appendix B hereto, infra, is reported in 230 Ga. 161. The opinion of the State trial court is unreported and is printed in Appendix B hereto, infra. The denial of rehearing by the Supreme Court of the State of Georgia printed in Appendix B hereto, infra, is reported in 230 Ga. at 165.

JURISDICTION

The judgment of the Supreme Court of the State of Georgia was entered on February 8, 1973 (Appendix B, infra). A timely petition for rehearing was denied on February 22, 1973 (Appendix B, infra), and this petition for certiorari was filed within ninety (90) days of that date. The jurisdiction of this Court is invoked under 28 U.S.C., §1257 (3). The final judgment of the lower Court to be reviewed is rendered by the highest State court of decision and rests upon a substantial Federal question raised by petitioners at the earliest opportunity and framed in the trial court and on appeal in full conformity with Georgia state practice and procedure.

Respondents consist of Goodwyn (Shag) Cages, Charlie Brown and Milton Farris (Members of the Fulton County Board of Commissioners of Roads and Revenues), Earl Garner (Director of Inspections and Licenses Department of Fulton County), F. P. Plaza, Inc. and Asa G. Candler, V, and Robert S. Griffith, Jr., d/b/a Candler-Griffith Co.

QUESTIONS PRESENTED

1. Whether the State of Georgia zoning enabling statutes and the Fulton County, Georgia zoning resolutions enacted thereunder which provide for notice of zoning hearings to property owners within the county, but provide no notice to residents or property owners residing outside the county but immediately adjacent to the property to be rezoned are per se and in application in violation of the due process and equal protection provisions of Article XIV, Section 1 of the United States Constitution.

2. Whether the State of Georgia zoning enabling statutes and the Fulton County, Georgia zoning resolutions enacted thereunder which provide for notice of zoning hearings solely by publication in the county newspaper in which sheriff's advertisements are published, and make no provision for personal notice to directly affected parties whose names and addresses are known or easily ascertainable are per se and in application in violation of the due process and equal protection provisions of Article XIV, Section 1 of the United States Constitution.

3. Whether the Fulton County Zoning Resolution which provides for notice of preliminary zoning hearing by mail to property owners within three hundred (300) feet of subject property, with the notice being mailed only to property owners listed on the tax records in Fulton County is per se and in application to property to be rezoned that abutts the county line, so arbitrary, unreasonable and discriminatory as to be unenforceable in violation of the due process and equal protection provisions of Article XIV, Section 1 of the United States Constitution.

4. Whether the State of Georgia statutes establishing zoning procedures in Fulton County (Georgia Laws, 1939, p. 584; Georgia Laws, 1952, p. 2689, and Georgia Laws, 1968, p. 3769) which require publication of notice with respect to an application to rezone property in Fulton County in the county newspaper in which sheriff's advertisements are published is violative of the due process and equal protection provisions of Article XIV, Section 1 of the United States Constitution insofar as it relates to Fulton County property which is immediately adjacent to the DeKalb County line in that it deprives DeKalb County residents and owners of property in close proximity to the Fulton County property sought to be zoned of an opportunity to appear and be heard and of notice similar to that which is given to residents and property owners in Fulton County.

5. Whether the private and informal actions of the county Board of Commissioners in changing their vote and taking new action after public hearing and final zoning action without the pre-requisite of new notice and hearing deprives affected property owners and residents of due process and equal protection in violation of Article XIV, Section 1 of the United States Constitution.

6. Whether the State of Georgia zoning statutes relative to Fulton County (Georgia Laws, 1939, p. 584; Georgia Laws, 1952, p. 2689, and Georgia Laws, 1968, p. 3769) and the Fulton County zoning resolutions adopted pursuant thereto are violative of Article XIV, Section 1 of the United States Constitution in that they provide for notice of applications for rezoning to property owners but do not provide for notice to residents similarly situated who are not property owners.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States of America, Article XIV, Section 1 U.S.C.A. Const. Amend. 14:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Georgia, Article I, Section I. Paragraph III (Ga. Code Ann. §2-103):

> No person shall be deprived of life, liberty, or property except by due process of law.

STATUTES AND ORDINANCES INVOLVED

Georgia Laws 1939, Page 584, Appendix A, infra.

Georgia Laws 1952, Page 2689, Appendix A, infra.

Georgia Laws 1968, Page 3769, Appendix A, infra.

State of Georgia, Fulton County Comprehensive Zoning Resolutions:

Article XXVIII, Sections 3 and 4 of the Fulton County Comprehensive Zoning Resolution read as follows:

ARTICLE XXVIII

CHANGES AND AMENDMENTS

SECTION 3. Report by Atlanta-Fulton County Joint Planning Board:

1. No amendment shall be made or become effective until the same shall have been proposed by or be first submitted for approval, disapproval or suggestions of the Atlanta-Fulton County Joint Planning Board shall transmit its report upon the proposed amendment within thirty (30) days after referral to it, or the Commissioners of Roads and Revenues may proceed to adopt or reject such amendment without further awaiting the receipt of the report of the Board.

2. The Board shall hold preliminary public hearings on proposed changes, notice of which shall be given no less than two (2) weeks prior to such hearing by posting in a conspicuous place on the property for which a zoning change is under consideration, a sign not less than six (6) square feet which shall contain information as to any proposed change in classification and date of said preliminary hearing. The Board shall also give similar notice by regular mail to all property owners within three hundred (300) feet of the subject property. Said notice shall be mailed to

property owners as ownership and address appear on the tax records of Fulton County.

SECTION 4. Public Hearing: Before finally adopting any amendment or change to the District Maps or text of the Resolution the Commissioners of Roads and Revenues shall hold a public hearing thereon at the first regular meeting following the hearing by the Planning Board, notice of which shall be given once a week for three weeks in the newspaper in which the sheriff's advertisements are published, provided, however, notice of the meeting to be held by the Atlanta-Fulton County Joint Planning Board may be given simultaneously and both notices may be run during the same period.

STATEMENT OF THE CASE

Petitioners are residents and property owners residing in single-family residents in DeKalb County, Georgia, immediately adjacent to the easterly boundary line of Fulton County and immediately adjacent to the Fulton County property which was the subject of two related rezoning applications filed in Fulton County by the respondents. Petitioners file this class action challenging the constitutionality of certain Georgia statutes and Fulton County zoning resolutions relating to zoning procedures in Fulton County, Georgia.

The State of Georgia zoning enabling statutes drawn in question, Ga. Laws 1939, p. 584; Ga. Laws 1952, p. 2689; Ga. Laws 1968,

p. 3769 (Appendix A, infra) provide that the local county governing authority, in this case the Fulton County Board of Commissioners, shall proceed to hold public hearing on rezoning applications after notice to all interested parties and specify only that notice shall be by publication once a week for at least three (3) weeks in the official county newspaper. Article XXVIII, Sections 3 and 4 of the Fulton County Zoning Resolutions provides for notice of preliminary public hearing of the Planning Commission by posting a sign on the property itself and by mail to all property owners within three hundred (300) feet of the subject property, but that said notice by mail shall be given only to property owners as appear on the tax records of Fulton County. Article XXVIII, Section 4 of the Fulton County Zoning Resolutions provides for notices of the public hearing before the County Board of Commissioners by publication in the newspaper in which sheriff's advertisements are published in Fulton County.

It is undisputed in this case that the only notice of any public hearing pertaining to the zoning of the Fulton County property in this case other than the posting of a sign on the vacant property was by publication in the Fulton County newspaper in which sheriff's advertisements are published in October of 1971, and by letters of October 1971 and April 1972 mailed by the Fulton County zoning administrator to only those property owners in Fulton County within three hundred (300) feet of the property sought to be rezoned. Whereupon after public hearing final action of the Fulton County Board of Commissioners was taken on May 3, 1972, zoning the subject Fulton County property from residential to office-institutional and townhouse-residential.

Thereafter, the Fulton County Board of Commissioners attempted to change their vote by private informal action rezoning the entire property to office-institutional, and at the next monthly public hearing of the Fulton County Commissioners on June 7, 1972, attempted to rescind all prior final action taken on May 3, 1972, and rezone said property in conformity with their subsequent informal vote and private action, notwithstanding that the June 7, 1972, meeting and public hearing of the Board of Commissioners was without the pre-requisite of new zoning application and notice to petitioners of said hearing.

Petitioners by assertion in their complaint attacked at first opportunity the foregoing State of Georgia zoning enabling acts and Fulton County Comprehensive Zoning Resolution provisions that denied the petitioners "due process" and "equal protection" of the law in providing notice to Fulton County property owners by legal publication and by mailing, but requiring no notice by either publication or mail to any residents or property owners in petitioners class across the county line and immediately adjacent to and directly affected by the property which was the subject of the rezoning actions. [R. 1-18, 26-43][2] The trial court rendered its finding of fact and judgment that petitioners had been denied due process and equal protection of the law; that the zoning action by the Fulton County Board of Commissioners complained of was illegal and void; and that in particular Article XXVIII, Sections 3 and 4 of the Fulton County

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2. Reference is to unprinted certified transcript of the record numbered pages.

Zoning Resolution requirements of notice were invalid, per se, as well as in application to petitioners in violation of the Georgia and the United States Constitutions. U.S.C.A. Const. Amend. 14. Constitution of the State of Georgia, Article I, Section I, Paragraph III, (Ga. Code §2-103). [R. 67-71] (Appendix B, infra.) Respondents appealed the trial court judgment to the Supreme Court of Georgia being the highest court of the State in which a decision could be had. The Supreme Court of Georgia thereupon accepted and ruled upon the properly presented Federal question framed in the trial court. (Appendix B, infra.) The Supreme Court of Georgia held that the defective notice provision of the Fulton County Zoning Resolution Article XXVIII, Sections 3 and 4, did not violate due process or equal protection of the law as it pertained to notice of preliminary hearing before the County Planning Commission; and that since the State zoning enabling statutes and the Fulton County Zoning Resolution provided for notice by publication in the Fulton County legal newspaper of the hearing before the Fulton County Board of Commissioners, and that said notice by publication had been given in Fulton County, these provisions thereby satisfied the requirements of procedural due process and equal protection as to all affected parties, wherever located. The Court further held that the private and informal action taken by the Fulton County Board of Commissioners and their action and decision taken between the dates of May 3, 1972 and through June 7, 1972, were valid as once notice is given to all interested citizens and property owners, the County governing authority is given by law absolute authority with respect to rezoning of property within its jurisdiction and almost unrestricted authority with

respect to the time and manner in making its decision. (Appendix B, infra.) A timely petition for rehearing was denied by the Supreme Court of Georgia on February 22, 1973. (Appendix B, infra.)

REASONS FOR GRANTING THE WRIT

1. The decision of the Supreme Court of the State of Georgia in the instant case directly conflicts with applicable decisions of this Court which are substantially indistinguishable. It is well settled that an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339 (1940); Mullane v. Central Hanover Tr. Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950). It is an opportunity which must be granted at a meaningful time in a meaningful manner. Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187 (1965).

Article XXVIII, Section 3 of the Fulton County Zoning Resolution is so arbitrary, unreasonable and discriminatory upon its face and in application to petitioners in this case as to be unenforceable because it is vague, uncertain and indefinite in that it requires notice by mailing to all property owners within three hundred (300) feet of the subject property and it further provides the inconsistent limitation that mailing shall only be to property owners as ownership appears on the tax records of Fulton County. The rationale of the Supreme Court of Georgia that said defective mailing notice provision

of the Fulton County Zoning Resolution is not a denial of due process and equal protection of the laws to petitioners as it pertains to notice of a preliminary hearing is without merit. A temporary, non-final deprivation of property is nonetheless a "deprivation" in terms of the Fourteenth Amendment. U.S.C.A. Const. Amend. 14. Fuentes, et al. v. Shevin, et al., 407 U.S. 67, 92 S.Ct. 1983 (1972). As to the sufficiency of notice by publication under the State of Georgia zoning enabling statutes, Georgia Laws 1939, Page 584; Georgia Laws 1952, Page 2689 and Georgia Laws 1968, Page 3769 (Appendix A, infra), and Article XXVIII, Sections 3 and 4 of the Fulton County Zoning Resolution, this Court has recognized the inadequacies of such notice in words that bear repeating here:

> "Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when as here the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention." Mullane v. Central Hanover Bank & Tr. Co., et al., at 315, 70 S.Ct., at 658.

The general rule that emerges from the decisions of this Court is that notice by publication is not enough with respect to a

person affected by the proceedings in question when his name and address are known or easily ascertainable. This rule has consistently been applied in holding that notice by publication only in an official local newspaper is constitutionally insufficient where the names and the post office addresses of those affected by a proceeding are at hand. New York v. New York, N. H. & H. R. Co., 344 U.S. 293, 296, 73 S.Ct., 299, 301 (1953); Walker v. Hutchinson City, 352 U.S. 112, 77 S.Ct., 200 (1956). The rule was again applied in Schroeder v. City of New York, 371 U.S. 208, 83 S.Ct., 279 (1962), in a factual situation much akin to the present case. In Schroeder, publication of notice of condemnation in two (2) county newspapers, published in communities miles away from the property of petitioners affected and posting of notice on trees and poles in general vicinity of property did not constitute notice required by due process, especially where property owner's name and address were readily ascertainable from both deed records and tax rolls.

Decision in the instant case is clearly controlled by the well settled rule stated in the decisions of this Court, and by the specifically relevant application of that rule in the Schroeder case. The decision of the Court below is shockingly wrong and presents substantial due process questions for review by this Court to prevent the sustaining of direct injury to petitioners as a result of the enforcement of the decision of the Supreme Court of the State of Georgia.

2. Clearly, the question presented is of importance in preserving for citizens, property owners and residents in municipal, county and local neighborhoods their right to notice of public hearing in decisions of

local governmental authorities as guaranteed by the United States Constitution. U.S.C.A. Const. Amend. 14. It is common as in this case as a matter of convenience for States to provide authority for zoning and rezoning to counties for property within their jurisdiction. However, even if the general validity of zoning regulations as in legitimate exercise of State power is beyond question, the decisions of this Court further establish that they may be held constitutionally invalid as applied, as in this case, when they operate to deprive petitioners as individuals of a protected right. Boddie v. Connecticut, 401 U.S. 377, 91 S.Ct. 780 (1971). Constitutional imperatives of the Equal Protection Clause must have priority over the comfortable convenience of a status quo. U.S.C.A. Const. Amend. 14. Williams v. Illinois, 399 U.S. 235, 90 S.Ct., 2018 (1970).

Thus, while a county line may be a factor in determining the appropriate form of the requisite notice and hearing of zoning procedures, it is not decisive of the basic right to prior notice and hearing of some kind. Far too frequently, the property owners or residents across the county line, but immediately and directly affected by the zoning actions, as petitioners in this case, are deprived at least in application of constitutionally valid notice as a matter of right, rather than as a matter of grace, under the guise of county boundaries. The Fourteenth Amendment draws no bright lines around municipal, city or county boundaries where deprivation of property is concerned.

Review of the substantial Federal question in this case by this Court is in the public interest, since it is likely to exist if not to be presented in many county

government provisions of notice based upon and provided to property owners within the county only that are constitutionally invalid, per se, and in application to interested and directly affected parties residing immediately across county lines.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

Ferdinand Buckley

Raymond H. Vizethann, Jr.

1515 Peachtree Center South
225 Peachtree Street, N.E.
Atlanta, Georgia 30303

COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of May, 1973, three copies of the petition for Writ of Certiorari were mailed, postage prepaid, to each party separately represented in the proceeding and required to be served pursuant to Rule 33 (1) and (3), Rules of the Supreme Court of the United States.

Raymond H. Vizethann, Jr.
1515 Peachtree Center South
225 Peachtree Street, N.E.
Atlanta, Georgia 30303

COUNSEL FOR PETITIONERS

CONSTITUTION

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

2-103. (6359) **Paragraph III. Life, liberty, and property.**—No person shall be deprived of life, liberty, or property, except by due process of law.

Cross-references.—Property rights of corporators, see § 22-705. Due process clauses of Federal Constitution, see §§ 1-805, 1-815.

See notes to §§ 1-805, 1-815, 2-125, 2-301, 2-5403; also 171/25 (154 S. E. 436).

Cited. 175/826, 831 (166 S. E. 200); 175/779, 784 (166 S. E. 227); 182/338, 339 (185 S. E. 330); 182/333, 334 (185 S. E. 522); 182/523 (186 S. E. 561); 184/187 (190 S. E. 592); 184/860 (1) (193 S. E. 769); 186/77, 78 (196 S. E. 769).

Applied. 186/446, 453 (197 S. E. 846).

Accusation: Whether it is necessary that affidavit should support accusation in city court, it is no ground of complaint where defendant is tried under accusation supported by affidavit that law creating city court makes no provision therefor; affidavit attested by clerk of city court, sufficient. 120/670 (4, 5) (48 S. E. 170).

Trial of one charged with violation of municipal ordinance without furnishing him with formal accusation or written statement of charge against him, constitutional. 124/701 (3) (52 S. E. 751); and see 7 App. 190 (1) (66 S. E. 489), 397 (1) (66 S. E. 1036); 10 App. 818 (1) (74 S. E. 286).

Failure to furnish person charged with violating city ordinance with written statement of charge did not deprive him of fair trial, with due process of law. 15 App. 511 (1) (83 S. E. 866).

Defendant charged with violating city ordinance need not be furnished with written statement of charge unless charter otherwise provides. Id.

Where petition for certiorari fails to set forth municipal ordinance requiring that accused be furnished with specific accusation and list of witnesses, refusal by municipal court of continuance because of refusal to inform accused as to specific charge and to furnish him list of witnesses is not ground for reversal. 17 App. 737 (1) (88 S. E. 416).

Where charter of municipality does not expressly so provide, it cannot be said that petty offender, charged with violating ordinance, was not accorded fair trial, with due process of law, because of failure to prefer written accusation specifically defining offense with which he was charged. 18 App. 33 (1) (88 S. E. 744).

Amusement places, dance halls, tourist camps, etc.: Acts 1937, p. 624, regulating establishment, etc., of public dance halls, amusement places, tourist camps, etc., outside limits of towns or cities having population of 3,000 or more, is not violative of this section. 193/565 (1) (19 S. E. 2d 493).

Arrest of one for violation of municipal ordinance and his detention, without warrant, to await trial before the mayor, on the next day, not illegal. 46/80 (1).

Assessments: Act providing for assessments for municipal improvements, unconstitutional, where not providing for fixing amount thereof with reference to cost or benefit to property owners, or for apportionment of cost, or for notice to property owners, or for giving them any hearing. 115/454 (41 S. E. 661).

Act authorizing collection of assessments for street improvements, after notice to owners, with right to contest validity and amount by judicial proceeding, not unconstitutional on ground that it deprives citizen of property without due process of law, though it requires that, as condition to legal proceeding, owner shall deposit amount admitted to be due. 136/398 (2, 3) (71 S. E. 770); see 85/49 (3) (11 S. E. 802).

Acts 1912, p. 574, § 15, amending charter of city of Atlanta, allowing sale of segment of street railway for street improvement, is not unconstitutional as lacking due process of law. 144/722, 723 (5) (87 S. E. 1058).

Assessment increasing valuation returned by property owner, without notice of hearing, was without due process of law, where remedy by arbitration proved abortive because arbitrators, though agreeing that assessment

APPENDIX A

ARTICLE XXVIII

CHANGES AND AMENDMENTS

SECTION 1. Requirements for Change: Whenever the public necessity, convenience, general welfare or good zoning practice justify such action, and after consideration by the Atlanta-Fulton County Joint Planning Board, the Commissioners of Roads and Revenues may, by resolution, change the regulations set forth in this Resolution and may change the zoning districts as established on the District Maps.

SECTION 2. Application for or Initiation of a Change: A proposed change of district or of text may be initiated by the Atlanta-Fulton County Joint Planning Board, the Commissioners of Roads and Revenues, or by an application filed with the Atlanta-Fulton County Joint Planning Board, by one or more owners of property within the area proposed to be changed; provided, however, that property owner shall not initiate action for a zoning amendment affecting the same parcel more often than once every twelve (12) months. Any communication purporting to be an application shall be regarded as mere notice to seek relief until it is made in the form required. Upon receipt of any such communication the interested parties shall be supplied with the proper form for present application.

SECTION 3. Report by Atlanta-Fulton County Joint Planning Board:

1. No amendment shall be made or become effective until the same shall have been proposed by or be first submitted for approval, disapproval or suggestions of the Atlanta-Fulton County Joint Planning Board. Such Board shall transmit its report upon the proposed amendment within thirty (30) days after referral to it, or the Commissioners of Roads and Revenues may proceed to adopt or reject such amendment without further awaiting the receipt of the report of the Board.

2. The Board shall hold preliminary public hearings on proposed changes, notice of which shall be given no less than two (2) weeks prior to such hearing by posting in a conspicuous place on the property for which a zoning change is under consideration, a sign not less than six (6) square feet which shall contain information as to any proposed change in classification and date of said preliminary hearing. The Board shall also give similar notice by regular mail to all property owners within three hundred (300) feet of the subject property. Said notice shall be mailed to property owners as ownership and address appear on the tax records of Fulton County.

SECTION 4. Public Hearing: Before finally adopting any amendment or change to the District Maps or text of the Resolution the Commissioners of Roads and Revenues shall hold a public hearing thereon at the first regular meeting following the hearing by the Planning Board, notice of which shall be given once a week for three weeks in the newspaper in which the sheriff's advertisements are published; provided, however, notice of the meeting to be held by the Atlanta-Fulton County Joint Planning Board may be given simultaneously and both notices may be run during the same period.

orn to and subscribed before me,
is 29th day of January, 1968.

/ Pamela A. McIntyre
Notary Public, Georgia, State at Large.
My Commission expires Jan. 9, 1971.
(Seal).

Approved April 12, 1968.

ACT CREATING ZONING AND PLANNING COMMISSIONS IN CERTAIN COUNTIES AMENDED (300,000 OR MORE).

No. 1263 (House Bill No. 1142).

An Act to amend an Act entitled "Zoning in Certain Counties" for the creation and establishment for counties having a population of 300,000 or more inhabitants, a county planning commission and a board of zoning appeals, and to authorize the board of commissioners of roads and revenues to exercise the authority conferred upon them by law with reference to zoning property in said county . . . and for other purposes" approved February 15, 1952 (Ga. L. 1952, p. 2689 et seq.) so as to provide that the hearing before the county authorities with respect to the modification or amendment of any portion of the comprehensive plan or zoning resolution shall be after a written report has been filed by the planning commision of the county, which report of such planning commission shall be within thirty (30) days after the public hearing held by such commission . . . and for other purposes.

Section 1. Be it enacted by the General Assembly of Georgia, and it is hereby enacted by the authority of the same, that An Act entitled "An Act to create and establish for counties having a population of 300,000 or more inhabitants by the last or any future census of the United States a county planning commission and board of zoning appeals and to authorize the board of commissioners of roads and

revenues or other governing authorities for such counties to create a county planning commission; to authorize said county planning commission to exercise the authority conferred upon them by law with reference to zoning property in said county; . . . and for other purposes" be amended by striking section 9 in its entirety and inserting in lieu thereof a new section 9 as follows:

"Section 9. After the adoption of said comprehensive plan or zoning resolution herein provided for, the same may be modified, amended, and designated areas therein changed, and the rules governing the erection and construction of buildings modified and changed in the following manner: All proposals to amend or modify any portion of the comprehensive plan or zoning resolution, whether proposed by the authorities in charge of county affairs, by the planning commission, by a property owner, or otherwise, shall be filed with the planning commission which shall proceed to hold a public hearing thereon after notice to interested parties, in accordance with the rules and regulations adopted by the authorities in charge of county affairs as a part of the zoning resolution. The commission shall make a written report to the authorities in charge of county affairs within 30 days after such hearing, which report shall contain the the recommendations of the commission as to whether or not the proposal to amend or modify the comprehensive plan or zoning resolution should be adopted. At the first regular meeting of the county commission after such report is received, the commissioners of roads and revenues or other governing authorities of such counties shall hold public hearing on said proposed change. Notice thereof shall be published once a week for at least three (3) weeks in the newspaper in which sheriff's advertisements are published prior to the holding of the same, such notice to state the nature of the proposed change and the date, hour and place of the meeting, which notice, however, may be published during the period when the planning commission has said matter under consideration, and before a recommendation has been made thereon. On the day and hour appointed for the public hearing the county authorities shall proceed to a hearing on the proposed change, provided they shall have the right to continue the hearing from day to day, or to a

named day, or may withhold final action thereon pending further consideration and investigation on their part, Provided, the county commission shall take no action until it has received the recommendation of the planning commission.

Section 2. Be it further enacted that all laws and parts of laws in conflict with this Act are hereby repealed.

Approved April 12, 1968.

DOUGHERTY COUNTY—COMPENSATION OF ORDINARY.

No. 1264 (House Bill No. 1654).

An Act to amend an Act placing the sheriff, the clerk of the superior court, and the ordinary of Dougherty County upon an annual salary, approved March 7, 1955 (Ga. L. 1955, p. 2874), as amended, so as to change the compensation of the ordinary of Dougherty County; to provide an effective date; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act placing the sheriff, the clerk of the superior court, and the ordinary of Dougherty County upon an annual salary, approved March 7, 1955 (Ga. L. 1955, p. 2874), as amended, is hereby amended by striking from section 2 the following:

"The salary of the ordinary of Dougherty County shall be seven thousand five hundred dollars ($7,500.00) per annum,"

and substituting in lieu thereof the following:

"The salary of the ordinary of Dougherty County shall be seven thousand five hundred dollars ($7,500.00) per

ZONING IN CERTAIN COUNTIES.

No. 825 (Senate Bill No. 268).

An Act to create and establish for counties having a population of 300,000 or more inhabitants by the last or any future census of the United States a county planning commission and board of zoning appeals and to authorize the board of commissioners of roads and revenues or other governing authorities for such counties to create a county planning commission; to authorize said county planning commission to exercise the authority conferred upon them by law with reference to zoning property in said county; to provide that said planning commission may recommend to the board of commissioners of roads and revenues or other governing authorities of such counties a comprehensive plan of zoning; to provide that said board of commissioners of roads and revenues or other governing authorities may adopt a comprehensive zoning plan; said county authorities may provide a method and manner of carrying out the terms of said Act; to provide that said county authorities may pass rules and regulations governing the zoning of property in such counties; to provide a method of electing the personnel to the county planning commission and to the board of zoning appeals; to provide authority for said board of commissioners of roads and revenues or other governing authorities for such counties to appropriate funds to provide for the personnel in carrying out the terms of this Act; to provide that said planning commission may administer the present law now in force until such time as the comprehensive plan for zoning is adopted; to provide that upon the adoption of said comprehensive plan this Act is to take effect; and for other purposes.

Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of the same as follows:

Section 1. That the board of commissioners of roads

County planning commission.

and revenues or other governing authorities of counties having a population of 300,000 or more inhabitants by the last or any future census of the United States shall have the power and authority to create a county planning commission, which said commission shall consist of five (5) citizens to be appointed by said board of commissioners of roads and revenues or other governing authorities of said counties, with the chairman of said board of commissioners of roads and revenues or other governing authorities as an ex-officio member thereof and the clerk of said board of commissioners of roads and revenues or other governing authorities for such counties as an ex-officio clerk thereof.

Members.

Section 2. Said planning commission shall have all of the power hereinafter set forth, shall have such other power as may be proper and consistent with the operation of said commission, shall have such additional powers as may by resolution of said board of commissioners of roads and revenues or other governing authorities for such counties from time to time be conferred thereon not inconsistent with the terms of this Act or the laws of this State, now or hereafter existing; the power and authority granted to said planning commission and to be granted them from any other source, as well as the power granted by the board of commissioners of roads and revenues or other county authority is to be exercised only in the unincorporated area of the county (that is outside any incorporated municipal limits). An office shall be provided for said commission in the courthouse of such counties at which said commission may hold its meetings, transact its business, and keep its records. Said commission shall have the power and authority to employ consulting advisors who may be experts or well-informed persons on county and municipal planning and such other help and personnel as may be necessary and to pay for such services, including any other expenses that may be necessarily incurred, and the expense of its members in the performance of their duties under the direction of said commission; all such expenses are herein authorized to be paid out of said funds as may be appropriated to said county planning commission by the board of commission-

Powers of commission.

Office.

Expenses.

ers of roads and revenues or other governing authorities of such counties, in its discretion.

Section 3. It shall be the duty of said county planning commission, and they shall have power to recommend or make suggestions to the board of commissioners of roads and revenues or other governing authorities of such counties concerning the laying out, widening, extending, and location of streets, boulevards, roads and highways; the location of parks and playgrounds; the relief of traffic conditions, traffic congestion; the development of housing and supervision of sanitary conditions; and the establishment of zones or districts. Further, it shall be the duty of said planning commission to consider and make recommendations and suggestions to the commissioners of roads and revenues or other governing authorities of such counties in Georgia, concerning the use, height, area, and kind of buildings or structures to be erected in the various sections of said counties; to study and propose such regulations as may be advisable for the promotion of the business interest, health, morals, safety, comfort, convenience and welfare of said counties. Duties.

Section 4. Said planning commission and the governing authorities of said counties shall at all times in carrying out the power and authority herein given bear in mind the unincorporated area over which they have jurisdiction and cooperate in so far as possible with the governing authorities of the cities of such counties or other authorities in carrying out the powers that may be granted or may hereinafter be granted from any source. Said planning commission shall have authority to investigate and make recommendations to the governing authorities of said counties concerning all plans for sewers, both sanitary and storm water, wherever placed in any property, subdivision or lots developed for sale. Whenever said counties undertake the erection of any public buildings (other than school buildings), the governing authorities of said counties shall refer the plans and specifications for such buildings or public improvements to the planning commission for consideration and recommendation. Powers.

Appropriations.

Section 5. The board of commissioners of roads and revenues or other governing authorities of such counties in Georgia are authorized and directed to make such appropriations to the county planning commission for the carrying on of its work as in the judgment of such governing authorities may be deemed advisable.

Selection of members, terms, etc.

Section 6. Immediately upon approval of this Act the board of commissioners of roads and revenues or other governing authorities for such counties shall elect the members to comprise said planning commission, being five (5) in all, (together with the chairman of said board of commissioners of roads and revenues or other governing authorities as ex-officio member thereof and the clerk of said board or other governing authorities as ex-officio clerk of said commission) and in electing them they shall designate that the terms of two of said members shall expire on January 1, next thereafter, and that the terms of three of said members shall expire on January 1, 1954. As the terms of said members of said planning commission expire their successor shall be elected for a term of four years. Provided however, that immediately upon the approval of this Act the board of commissioners of roads and revenues or other governing authorities of such counties who under the present law are operating with four members may elect the additional member for a term to expire on January 1, 1954 and upon expiration of said term his successor shall be elected for a term of four (4) years.

Zoning plan.

Section 7. Said planning commission shall prepare and submit to the board of commissioners of roads and revenues or other governing authorities a comprehensive plan for zoning said counties, for the purpose of suggesting the proper location of streets, apartment houses, dwellings and other uses of property or land, the height of buildings, the area of the lot to be occupied, the provision of yard space and the fixing of building lines. It is not intended by the provision to vest in the planning commission, or for that matter in the board of commissioners of roads and revenues or other governing authorities, authority to forthwith adopt a planning or zoning

resolution. Said board of commissioners of roads and revenues or other governing authorities of such counties may however, receive from said planning commission a comprehensive plan for zoning and then proceed to adopt same as hereinafter provided.

Section 8. Upon receipt of the comprehensive plan herein mentioned from said county planning commission the board of commissioners of roads and revenues or other governing authorities of said counties of Georgia may accept or reject the report; they may adopt an entirely new plan or they may adopt the plan of the said planning commission in modified form. Before proceeding to the consideration of such an adoption, however, the county authorities shall advertise once a week for four weeks in a newspaper published in said county the fact that on a given date they will proceed with consideration of the plan offered by the planning commission, so that the public may be informed of the action contemplated by the said county authorities. On the day named in the notice they shall proceed to the adoption of said plan (in modified form if they so desire) or some other plan of their own and may continue the hearing from day to day or to any named day until they take final action on the same.

Notice, hearing to adopt plan.

Section 9. After the adoption of said comprehensive plan or zoning resolution herein provided for, the same may be modified, amended, and designated areas therein changed, and the rules governing the erection and construction of buildings modified and changed in the following manner: All proposals to amend or modify any portion of the comprehensive plan or zoning resolution, whether proposed by the authorities in charge of county affairs, by the planning commission, by a property owner, or otherwise, shall be filed with the planning commission which shall proceed to hold a public hearing thereon after notice to interested parties, in accordance with the rules and regulations adopted by the authorities in charge of county affairs as a part of the zoning resolution. Such proposal shall likewise be heard by the authorities in charge of county affairs at the next regu-

Procedure to amend adopted plan or resolution.

lar meeting thereof after notice of such hearing (day and hour) of said proposed change has been given to the public by publishing notice thereof in the newspaper in said county in which the sheriff's advertisements are published, once a week for at least three weeks; provided, however, notice of the meeting to be held before the county authorities and of the meeting to be held by the planning commission may be given simultaneously and both notices may be run during the same period. The county authorities may proceed to hear all interested parties in support of and in opposition to the proposed change but in no case shall a final decision be made thereon until the recommendation of the planning commission has been received and filed with the county authorities or considered by the county authorities in final action thereon. On the day and hour appointed for a public hearing the county authorities shall proceed to a hearing on the proposed change, provided they shall have the right to continue the hearing from day to day, or to a named day, as in their discretion they may deem advisable or may table any proposal or postpone any hearing pending receipt of the recommendation of the planning commission, or may proceed with the hearing but withhold final action thereon pending receipt of the recommendation of the planning commission.

Rules and regulations of planning commission.

Section 10. The county planning commission shall adopt such rules and regulations as they may deem advisable for the governing of their commission and adopt such rules and regulations as they may deem advisable for the public to appear before said planning commission and be heard as to any changes, modifications or amendments to any planning to zoning resolution that may have been passed by any county authorities; and they may require a deposit of such advertising cost or other cost as they may in their discretion see fit, before they will conduct a hearing in regard to any application, in regard to any change, modification or amendment and before they will recommend the same to the commissioners of roads and revenues or other governing authorities of such counties in Georgia.

Section 11. The board of commissioners of roads and revenues or other governing authorities for such counties in Georgia may, in the interest of public health, safety, order, convenience, comfort, prosperity or the general welfare of the community, adopt by resolution a plan or plans for the districting and/or zoning of the territory and land in such counties in Georgia, (outside of incorporated areas), for the purpose of regulating location of business, trades, industries, residences, apartment houses, hotels, dwellings, outhouses, or any other use of property or land, or for the purpose of regulating the height, kind and dimensions of buildings or other structures; also they may prescribe for the same purpose the area or dimensions of the lots and yards used in connection with any building or structure to be erected and occupied for any purpose set out in this section; or they may in their discretion regulate the alignment of buildings and structures and prescribe their distances from the street along the front thereof. The zoning regulations may be based on any one or more of the purposes above described. The county may be divided into such number of zones or districts and such districts may be of such shape and area as the county authorities may deem best suited to attain the purpose of the zoning regulations. Such county authorities may go into congested areas and prescribe zoning regulations for any part or all of such congested areas and they are to be the judges of where such congested areas may be and the extent and limitations thereof. In the determination and establishment of districts and regulations, classifications may be based upon the nature or character of the trade, industry, profession or other activity conducted or to be conducted upon the premises or land, the number of persons, families or other group units to reside in or use such buildings, the public, quasi-public, or private nature of the use of the premises or land, or upon any other basis or bases relevant to the promotion of public health, safety, order, morals, convenience, prosperity or welfare of the community.

Zoning powers of county.

Section 12. For the reasons stated said county authorities shall have the right and power, in any districts

proposed to be set aside primarily for residence purposes, to further classify the use thereof and to provide therein the class or classes of residents to be housed therein and to provide therein such other similar regulations and restrictions as shall secure the peace and good order of the county and the residents thereof.

Condition precedent to adoption of zoning regulations.

Section 13. No resolution adopting zoning regulations as above authorized shall be passed by the commissioners of roads and revenues or other governing authorities of such counties in Georgia until after a comprehensive plan for the zoning of the county has been prepared and submitted to the commissioners of roads and revenues or other governing authorities of such counties in Georgia by the county planning commission; and the same may be adopted modified or repealed, provided notice is given thereof in the same manner as provided for modifications and changes as in this Act set out.

Administration of zoning regulations.

Section 14. The zoning regulations here authorized and adopted by said county authorities shall be administered by the inspector of buildings and/or some other designated official under the rules and regulations of the board of zoning appeals.

Board of zoning appeals.

Section 15. The board of commissioners of roads and revenues or other governing authorities of such counties in Georgia are authorized to create a board of zoning appeals which said board shall hear and decide appeals from, and review any order, requirement, or determination made by, the inspector of buildings in the enforcement of zoning regulations or made by any other official of the county to whom the enforcement of these regulations may be delegated. The board of zoning appeals in its administration of said regulations may permit an exception to the regulations herein provided for and shall lay down rules and regulations for hearings on petitions for such exceptions to the said regulations, and grant or reject the same as in their judgment may seem best.

Section 16. The board of zoning appeals here au-

thorized shall consist of any number of citizens (not exceeding) five (5) appointed by the board of commissioners of roads and revenues or other governing authorities of such counties in Georgia in the same manner and at the same time as the planning commission may be appointed. Said commissioners of roads and revenues or other governing authorities of such counties in Georgia if they see fit may declare that the planning commission may exercise all the functions of the board of zoning appeals and if they so determine such board of zoning appeals will be the same as the planning commission until such time as the board of commissioners of roads and revenues or other governing authorities of such counties in Georgia may see fit to change the same and appoint a separate personnel for said purpose.

Members.

Planning commission may act board of appeals.

Section 17. Every decision of the board of zoning appeals, or the board of adjustment, in the administration of the authority hereinabove set out and in the administration of the zoning regulations of said counties shall be subject to review by the superior court of such county as provided in the Act providing for zoning by municipal authorities (Ga. L. 1946, pp. 191, 194).

Review by superior court.

Section 18. Be it further enacted by the authority aforesaid that any property in such counties heretofore zoned by any proper authority heretofore existing shall not be changed or upset by reason of the authority here given for the zoning or planning; but all said property shall remain zoned as if this Act had not been passed until such time as the proper county authorities, may, in their discretion re-zone said property, and when so rezoned for said purpose it shall be done under the authority and in the manner here prescribed.

Property already zoned.

Section 19. Be it further enacted that any person, firm or corporation violating any of the provisions of this Act or any restrictions imposed by authority of this Act, or violating any regulations of any county authority made in pursuance of this Act, shall be guilty of a misdemeanor, and upon conviction, shall be subject to fine

Violations.

or imprisonment or both, as provided by law, in misdemeanor cases.

Nuisances.

Section 20. Be it further enacted by the authority aforesaid that any violation of the terms of this Act by any person, firm or corporation or a violation by such parties of the rules and regulations prescribed by the county authorities in pursuance with this Act shall be termed a nuisance and a continuing nuisance so long as such violation may be continued and such violation may be subject to abatement as a nuisance as provided by the laws of this State.

Enforcement of Act.

Section 21. Be it further enacted by the authority aforesaid that the authority herein given to the county authorities under the terms and conditions of this Act may be enforced by the county, or proper county authority, by injunction or otherwise. This authority is cumulative and is not to be construed as curtailing the right of any person, firm or corporation, resident, property owner or other persons, of bringing any proper action for the enforcement of this Act or of such rules and regulations as may be promulgated by county authorities in pursuance of this Act.

Existing zoning laws.

Section 22. Be it further enacted by the authority aforesaid that until the adoption of a comprehensive zoning plan by the board of commissioners of roads and revenues or other governing authorities of such counties in Georgia which is provided for in this Act, that the present laws of force and effect in said counties concerning zoning shall remain of force and effect; it being contemplated by this Act that the present zoning laws for such counties are to remain in force and effect until the time herein set out; namely: upon adoption by said board of commissioners of roads and revenues or other governing authorities of such counties in Georgia of a comprehensive zoning plan as provided for in this Act; and that in the meantime said present law is in no wise

Pending applications, etc.

amended, modified or repealed except in the following manner: it is hereby specifically provided that immediately upon the approval of this Act the board of commis-

sioners of roads and revenues or other governing authorities of such counties in Georgia may elect and set up and organize the county planning commission provided for in this Act, and that said county planning commission shall immediately take over the duty of receiving applications, conducting hearings and administer the present zoning regulations under such rules and regulations consistent therewith as may be prescribed by said board of commissioners of roads and revenues or other governing authorities of such counties in Georgia; such petitions for zoning as may be pending before the board of commissioners of roads and revenues or other governing authorities of such counties in Georgia may be transferred by such board of commissioners of roads and revenues or other governing authorities of such counties in Georgia to the county planning commission with a definite date fixed for their hearing so that those interested may be notified. On the day and hour named by the board of commissioners of roads and revenues or other governing authorities of such counties in Georgia for the hearing of such pending petitions the county planning commission may proceed to hear them or if in their judgment it so desires postpone them until a definite time for such hearing. The county planning commission in administering the present law will keep minutes or records and return a record of its findings to the board of commissioners of roads and revenues or other governing authorities of such counties in Georgia so that the same may be spread upon the minutes of such board of governing authorities.

Compensation of members, commission and board.

Section 23. Be it further enacted by the authority aforesaid that the members of the planning commission and of the board of zoning appeals provided herein shall receive a compensation of ten dollars ($10.00) per day for each day on which such members shall attend a meeting of the planning commission or board of zoning appeals for the purpose of transacting business, said compensation to be paid out of county funds.

Section 24. Be it further enacted that if any part, parts or sections of this Act should for any reason be

declared unconstitutional, such decision shall not affect the validity of any remaining portion of this Act, which remaining portion shall remain of force as if such Act had been passed with the unconstitutional portion thereof eliminated, and it is hereby declared the intention of the General Assembly that it would have adopted the remaining portion of this Act without including therein any such part, parts of section which may for any reason be hereafter declared unconstitutional.

Rules and regulations, force of.

Section 25. The rules and regulations adopted by the planning commission herein authorized, or the governing authorities of such counties in Georgia shall have the force and effect of law; and said planning commission and said governing authorities of such counties in Georgia being hereby clothed with all of the authority which the General Assembly can grant to such authorities and such planning commission under the laws of the State of Georgia.

If municipal planning board.

Section 26. Should the largest municipality lying wholly or in part in any such county form a municipal planning board and board of adjustment as authorized by an Act approved January 31, 1946 (Ga. L. 1946, p. 191), entitled, "An Act to authorize the governing authority of the several municipalities of this State to enact zoning and planning ordinances and regulations, to provide the procedure for zoning and planning, to provide for the establishment of planning boards and boards of adjustment and for other purposes." as amended, said municipal planning board and board of adjustment shall, respectively, have all of the powers, authority and duties of the county planning commission and county board of zoning appeals provided by this Act or any amendment thereto, and no county planning commission or county board of zoning appeals shall be created or appointed.

Section 27. This Act is to take effect upon the date of its approval.

Section 28. Be it further enacted that all laws and

parts of laws in conflict with this Act are hereby repealed.

Approved February 15, 1952.

CITY COURT OF CHATTOOGA COUNTY.

No. 827 (Senate Bill No. 375).

An Act to repeal an Act approved January 31, 1951 (Ga. L. 1951, p. 2040), which Act amended an Act establishing the City Court of Chattooga County by changing the method of selecting the solicitor of said court; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia as follows:

Act of 1951 repealed.

Section 1. The Act approved January 31, 1951 (Ga. L. 1951, p. 2040), which Act amended an Act establishing the City Court of Chattooga County by changing the method of selecting the solicitor of said court, is hereby repealed in its entirety.

Section 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved February 15, 1952.

Affidavit of publication attached to enrolled copy.

CHATTOOGA COUNTY—ORDINARY'S COMPENSATION.

No. 833 (Senate Bill No. 377).

An Act to give the Ordinary of Chattooga County compensation in addition to the fees which he now re-

fi. fa. shall claim that the amount thereof, or some part of same is not owing, or that the same is proceeding illegally, he may file illegality thereto, and the procedure thereon, in this event shall be the same as provided for illegalities in case of tax fi. fas.

Service or maintenance charge.

Section 13. The county authorities aforesaid shall have authority to charge a reasonable sum for the maintenance of said sewer after the same is laid in addition to the cost of construction and this authority can be exercised by charging a flat rate for each service connection to be provided for by regulation taking into consideration the kind of building to be served or an annual maintenance charge may be made by said county authorities as in their judgment seems best. The county authorities will provide by regulation the method and manner of collecting for such maintenance service and for the issuance of fi. fas. for the collection thereof if necessary.

Approved March 4, 1939.

FULTON PLANNING COMMISSION CREATED.

No. 65.

An Act to create and establish for Fulton County, a County Planning Commission and Board of Zoning Appeals, and to authorize the Board of Commissioners of Roads and Revenues for Fulton County to create a County Planning Commission; to authorize said County Planning Commission to exercise the authority conferred upon them by law with reference to zoning property in said county; to provide that said planning commission may recommend to the Board of Commissioners a comprehensive plan of zoning; to provide that said Board of Commissioners may adopt the comprehensive zoning plan; said county authorities may

APPENDIX A

provide a method and manner of carrying out the terms of this Act; to provide that said county authorities may pass rules and regulations governing the zoning of property in Fulton County; to provide a method of electing the personnel to the County Planning Commission and to the Board of Zoning Appeals; to provide authority for said Board of Commissioners of Roads and Revenues for Fulton County to appropriate funds to provide for the personnel in carrying out the terms of this Act; to provide that said planning commission may administer the present law now in force until such time as such comprehensive plan for zoning is adopted; to provide that upon the adoption of said comprehensive plan this Act is to take effect; and for other purposes.

Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of the same as follows:

Section 1. That the Board of Commissioners of Roads and Revenues or other governing authority, of Fulton County, Georgia, shall have the power and authority to create a County Planning Commission, which said commission shall consist of four (4) citizens to be appointed by said Board of Commissioners of Roads and Revenues of said county or other county authority, with the chairman of said Board of Commissioners of Roads and Revenues as an ex-officio member thereof and the Clerk of said Board of Commissioners of Roads and Revenues for Fulton County as an ex-officio clerk thereof.

Organization of planning commission.

Section 2. Said County Planning Commission shall have all the powers hereinafter set forth, shall have such other powers as may be proper and consistent with the operation of said commission, shall have such additional powers as may by resolution of said Board of Commissioners of Roads and Revenues for Fulton County from time to time be conferred thereon not inconsistent with the terms of this Act or the laws of this State, now or

Powers.

hereafter existing; the power and authority granted to said Planning Commission and to be granted them from any other source, as well as the power granted by the Board of Commissioners of Roads and Revenues, or any other county authority, is to be exercised only in the unincorporated areas of the county (that is outside any incorporated municipal limits). An office shall be provided for said Commission in the Court House of said county at which said Commission may hold its meetings, transact its business and keep its records. Said Commission shall have the power and authority to employ consulting advisors who may be experts or well-informed persons on county and municipal planning and such other help and personnel as may be necessary and to pay for such services, including any other expenses that may be necessarily incurred, and the expense of its members in the performance of their duties under the direction of said commission; all such expenses are here authorized to be paid out of such funds as may be appropriated to said County Planning Commission by the Board of Commissioners of Roads and Revenues of Fulton County, Georgia, in its discretion.

Office in court house.

Duties.

Section 3. It shall be the duty of said County Planning Commission, and they shall have power to recommend or make suggestions to the Fulton County Commissioners or other authority concerning the laying out, widening, extending, and location of streets, boulevards, roads and highways; the location of parks and playgrounds; the relief of traffic conditions, traffic congestion; the development of housing and supervision of sanitary conditions; and the establishment of zones or districts. Further, it shall be the duty of said Planning Commission to consider and make recommendations and suggestions to the Commissioners of Roads and Revenues of Fulton County, Georgia, concerning the use, height, area, and kind of buildings or structures to be erected in the various sections of said county; to study and propose such regulations as

APPENDIX A

Fulton Planning Commission Created.

may be advisable for the promotion of the business interest, health, morals, safety, comfort, convenience and welfare of said county.

Section 4. Said Planning Commission and the governing authorities of said county shall at all times in carrying out the power and authority herein given bear in mind the unincorporated area over which they have jurisdiction and cooperate in so far as possible with the governing authorities of the City of Atlanta or other authorities in carrying out the powers that may be granted or may hereinafter be granted from any source. Said Planning Commission shall have authority to investigate and make recommendation to the governing authorities of said county concerning all plans for sewers, both sanitary and stormwater wherever placed in any property, subdivision or lots developed for sale. Whenever said county undertakes the erection of any public building (other than school buildings), the governing authorities of said county shall refer the plans and specifications for such building or buildings or public improvements to the Planning Commission for consideration and recommendation.

Cooperation with City of Atlanta.

Recommendations in regard to sewers and public buildings.

Section 5. The Board of Commissioners of Roads and Revenues for Fulton County, Georgia, are authorized and directed to make such appropriation to the County Planning Commission for the carrying on of its work as in the judgment of such Board of Commissioners of Roads and Revenues of Fulton County may be deemed advisable.

Appropriation.

Section 6. Immediately upon the approval of this Act the Board of Commissioners of Roads and Revenues for Fulton County shall elect the members to comprise said Planning Commission, being four (4) in all, (together with the chairman of said board as ex-officio member thereof and the clerk of said board as ex-officio clerk of said commission) and in electing them they shall designate that the terms of two of said members shall expire on

Members and terms.

January 1, next thereafter, and that the terms of two of said members shall expire on January 1, 1942. As the terms of said members of said Planning Commission expire their successors shall be elected for a term of four (4) years.

Zoning plan.

Section 7. Said Planning Commission shall prepare and submit to the Board of Commissioners of Roads and Revenues for Fulton County a comprehensive plan for zoning said county, for the purpose of suggesting the proper location of streets, apartment houses, dwellings and other uses of property or land, the height of buildings, the area of the lot to be occupied, the provision of yard space and the fixing of building lines. It is not intended by this provision to vest in this Planning Commission, or for that matter, in the Board of Commissioners of Roads and Revenues, authority to forthwith adopt a planning or zoning resolution. Said Board of Commissioners of Roads and Revenues of Fulton County, may, however, receive from said planning Commission a comprehensive plan for zoning and then proceed to adopt the same as hereinafter provided.

Adoption of zoning plan.

Section 8. Upon receipt of the comprehensive plan herein mentioned from said County Planning Commission the Board of Commissioners of Roads and Revenues of Fulton County, Georgia, may accept or reject the report; they may adopt an entirely new plan or they may adopt the plan of the said Planning Commission in modified form. Before proceeding to the consideration of such an adoption, however, the county authorities shall advertise once a week for four weeks in a newspaper published in said county the fact that on a given date they will proceed with the consideration of the plan offered by the Planning Commission, so that the public may be informed of the action contemplated by the said county authorities. On the day named in the notice they shall proceed to the adoption of said plan (in modified form if they so desire)

or some other plan of their own and may continue the hearing from day to day or to any named day until they take final action on the same.

Method of amending zoning plan.

Section 9. After the adoption of said comprehensive plan or zoning resolution herein provided for, the same may be modified, amended and designated areas therein changed and the rules governing the erection and construction of buildings modified and changed in the following manner: Said Planning Commission may submit to the county authorities of Fulton County, Georgia, any recommendation as to change. Said commission upon receipt of such a suggestion or report shall set a time (day and hour) for the hearing of said proposed change and give notice to the public thereof by publishing notices in the newspaper in said county in which the sheriff's advertisements are published once a week for at least three weeks. On the day and hour appointed the Commissioners of Roads and Revenues of Fulton County shall proceed to hear and determine the recommendation of said Planning Commission in this regard and dispose of the same. They have the right to continue the hearing from day to day or to any named day as in their discretion they may deem it advisable. Said commissioners of Roads and Revenues of Fulton County, Georgia, may on their own motion (without recommendation from the Planning Commission) proceed to modify or amend such zoning or planning resolution as may have been established and make such modifications or amendments as they may see fit, provided they proceed first by passing a formal resolution that they will on a certain day named proceed to consider such amendment, modification or change and give notice thereof in the same manner as provided herein, for other notices.

Rules of Commission.

Section 10. The County Planning Commission shall adopt such rules and regulations as they may deem advisable for the governing of their commission and adopt

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Public hearings.

such rules and regulations as they may deem advisable for the public to appear before said Planning Commission and be heard as to any changes, modifications or amendments to any planning or zoning resolution that may have been passed by any county authority; and they may require a deposit of such advertising costs or other costs as they may in their discretion see fit, before they will conduct a hearing in regard to any application in regard to any change, modification or amendment and before they will recommend the same to the Commissioners of Roads and Revenues of Fulton County, Georgia.

Zoning districts.

Section 11. The Board of Commissioners of Roads and Revenues for Fulton County, Georgia, may, in the interest of public health, safety, order, convenience, comfort, prosperity or the general welfare of the community, adopt by resolution a plan or plans for the districting and/or zoning of the territory and land in Fulton County, Georgia, (outside of incorporated areas), for the purpose of regulating the location of businesses, trades, industries, residences, apartment houses, hotels, dwellings, outhouses, or any other uses of property or land, or for the purpose of regulating the height, kind and dimensions of buildings or other structures; also they may prescribe for the same purposes the area or dimensions of the lots and the yards used in connection with any buildings or structures to be erected and occupied for any purpose set out in this section; or they may in their discretion regulate the alignment of buildings and structures and prescribe their distance from the street along the front thereof. The zoning regulations made may be based on any one or more of the purposes above described. The county may be divided into such number of zones or districts and such districts may be of such shape and area as the county authorities may deem best suited to attain the purpose of the zoning regulations. Such county authorities may go into congested areas and prescribe zoning regulations for any part of or all of such congested areas and they are

to be the judges of where such congested areas may be and the extent and limitations thereof. In the determination and establishment of districts and regulations, classifications may be based on the nature or character of the trade, industry, profession or other activity conducted or to be conducted upon the premises or land, the number of persons, families or other group units to reside in or use such buildings, the public, quasi-public, or private nature of the use of the premises or land, or upon any other basis or bases relevant to the promotion of the public health, safety, order, morals, convenience, prosperity, or welfare of the community.

Residential restrictions.

Section 12. For the reasons herein stated said county authorities shall have the right and power, in any districts proposed to be set aside primarily for residence purposes, to further classify the use thereof and to provide therein the class or classes of residents to be housed therein and to provide therein such other and similar regulations and restrictions as shall secure the peace and good order of the county and the residents thereof.

Plan to be submitted before resolution adopted.

Section 13. No resolution adopting zoning regulations as above authorized shall be passed by the Commissioners of Roads and Revenues of Fulton County, Georgia, until after a comprehensive plan for the zoning of the county has been prepared and submitted to the Commissioners of Roads and Revenues of Fulton County by the Planning Commission; and the same may be adopted modified or repealed, provided notice is given thereof in the same manner as provided for modifications and changes as in this Act set out.

Administration.

Section 14. The zoning regulations here authorized and adopted by said county authorities shall be administered by the inspector of buildings and/or some other designated official under the rules and regulations of the Board of Zoning Appeals.

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Fulton Planning Commission Created.

Board of Zoning Appeals.

Section 15. The Board of Commissioners of Roads and Revenues for Fulton County are authorized to create a Board of Zoning Appeals which said Board shall hear and decide appeals from, and review any order, requirement, or determination made by, the inspector of buildings in the enforcement of zoning regulations or made by any other official of the county to whom the enforcement of these regulations may be delegated. The Board of Zoning Appeals in its administration of said regulations may permit an exception to the regulations herein provided for and shall lay down rules and regulations for hearings on petitions for such exceptions to the said regulations, and grant or reject the same as in their judgment may seem best.

Personnel of appeal board.

Section 16. The Board of Zoning Appeals here authorized shall consist of any number of citizens (not exceeding) four (4) appointed by the Board of Commissioners of Roads and Revenues of Fulton County, Georgia, in the same manner and at the same time as the Planning Commission may be appointed. Said Commissioners of Roads and Revenues if they see fit may declare that the Planning Commission may exercise all the functions of the Board of Zoning Appeals and if they so determine such Board of Zoning Appeals will be the same as the Planning Commission until such time as the Board of Commissioners of Roads and Revenues of Fulton County may see fit to change the same and appoint a separate personnel for said purpose.

Certiorari from superior court.

Section 17. Every decision of the Board of Zoning Appeals in the administration of the authority hereinabove set out and in the administration of zoning regulations of said county shall be subject to writ of certiorari issued from the superior court upon the same terms as such writs are issued in any case.

Section 18. Be it further enacted by the authority aforesaid that any property in Fulton County heretofore

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zoned by any proper authority heretofore existing shall not be changed or upset by reason of the authority here given for the zoning or planning; but all said property shall remain zoned as if this Act had not been passed until such time as the proper county authorities, may, in their discretion re-zone said property, and when so re-zoned for said purpose it shall be done under the authority and in the manner here prescribed. Previous zoning.

Section 19. Be it further enacted that any person, firm or corporation violating any of the provisions of this Act or any restrictions imposed by authority of this Act, or violating any regulations of any county authority made in pursuance of this Act, shall be guilty of a misdemeanor, and upon conviction, shall be subject to fine or imprisonment or both, as provided by law, in misdemeanor cases. Punishment for violation of Act.

Section 20. Be it further enacted by the authority aforesaid that every violation of the terms of this Act by any person, firm or corporation or a violation by such parties of the rules and regulations prescribed by the county authorities in pursuance with this Act shall be termed a nuisance and a continuing nuisance so long as such violation may be continued and such violation may be subject to abatement as a nuisance as provided by the laws of this State. Violation a nuisance.

Section 21. Be it further enacted by the authority aforesaid that the authority herein given to the county authorities under the terms and conditions of this Act may be enforced by the county, or proper county authority, by injunction or otherwise. This authority is cumulative and is not to be construed as curtailing the right of any person, firm or corporation, resident, property owner or other persons, of bringing any proper action for the enforcement of this Act or of such rules and regulations as may be promulgated by county authorities in pursuance of this Act. Injunction.

Fulton Planning Commission Created.

Present zoning laws of force until provisions of this Act are carried out.

Section 22. Be it further enacted by the authority aforesaid that until the adoption of a comprehensive zoning plan by the authorities of Fulton County which is provided for in this Act, that the present laws of force and effect in said county concerning zoning shall remain of force and effect; it being contemplated by this Act that the present zoning law for Fulton County passed at the Extraordinary Session of the General Assembly of Georgia (Acts Extraordinary Session 1937-38 p. ....) are to remain in force and effect until the time herein set out; namely: upon the adoption by said Board of Commissioners of Roads and Revenues of Fulton County of a comprehensive zoning plan as provided for in this Act; and that in the meantime said present law is in no wise amended, modified or repealed except in the following manner: it is hereby specifically provided that immediately upon the approval of this Act the commissioners may elect and set up and organize the County Planning Commission provided for in this Act, and that said County Planning Commission shall immediately take over the duty of receiving applications, conducting hearings and administering the present zoning regulations under the Act passed at the Extraordinary Session aforesaid, under such rules and regulations as may be prescribed by said Board of Commissioners of Roads and Revenues for Fulton County, Georgia; such petitions for zoning as may be pending before the board of Commissioners of Roads and Revenues for Fulton County, Georgia may be transferred by the Board of Commissioners to the county planning Commission with a definite date fixed for their hearing so that those interested may be notified. On the day and hour named by the Board of Commissioners of Roads and Revenues for the hearing of such pending petitions the County Planning Commission may proceed to hear them or if in their judgment it so desires postpone them until a definite time for such hearing. The County Planning Commission in administering the present law

will keep minutes or records and return a record of its findings to the Board of Commissioners of Roads and Revenues for Fulton County so that the same may be spread upon the minutes of said board.

Section 23. Be it further enacted that if any part, parts or section of this Act should for any reason be declared unconstitutional, such decision shall not affect the validity of any remaining portion of this Act, which remaining portion shall remain of force as if such Act had been passed with the unconstitutional portion thereof eliminated, and it is hereby declared the intention of the General Assembly that it would have adopted the remaining portion of this Act without including therein any such part, parts or section which may for any reason be hereafter declared unconstitutional.

Section 24. The rules and regulations adopted by the Planning Commission here authorized, or the governing authorities of Fulton County shall have the force and effect of law; and said Planning Commission and said governing authorities being hereby clothed with all of the authority which the General Assembly can grant to such authorities and such Planning Commission under the laws of the State of Georgia. Grant of authority.

Section 25. This Act shall take effect upon its approval. Effective date.

Section 26. Be it further enacted that all laws and parts of laws in conflict with this Act are hereby repealed.

Approved February 21, 1939.

GLASCOCK BOARD OF COMMISSIONERS CREATED.

No. 10.

An Act to create a Board of Commissioners of Roads and Revenues in and for the County of Glascock; to name the members thereof until their successors are elected

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No. 27484. F. P. PLAZA, INC. et al. v. WAITE et al.

GUNTER, Justice. This case comes here on appeal from a judgment of Fulton Superior Court which declared certain "notice provisions" of the Fulton County Comprehensive Zoning Resolution unconstitutional because of their violation of the "due process" and "equal protection" requirements of the Georgia and Federal Constitutions.

We hold that the judgment below was erroneous and must be reversed.

Appellants made proper application to rezone certain land in Fulton County located on the boundary line between Fulton and DeKalb Counties. The land was eventually rezoned by the Fulton County Commissioners in accordance with the application for rezoning, but the appellees, all property owners or occupants of property in DeKalb County, attacked the rezoning in this lawsuit as being invalid.

Whether the owners and occupants of land in one county can have standing to attack the rezoning of land in another county is a very interesting question, but because of the facts in this case applied to the law as we interpret it we do not have to reach that issue in deciding this case.

The crux of the attack against the rezoning by the appellees was that they did not have "notice" of the rezoning proceedings as required by law, that their property rights were affected by the rezoning, and the rezoning was therefore in violation of their

consitutional "due process" and "equal protection" rights.

The Georgia Constitution provides for zoning by counties. Code Ann. §§ 2-1923 and 2-8404.

The authorization contained in our Constitution for a county to zone property within its jurisdiction includes the right to rezone property which had already been zoned. See *Kirkpatrick v. Candler*, 205 Ga. 449 (53 SE2d 889).

Section 8 of Act No. 825, Ga. L. 1952, p. 2689, provided that the governing authority of Fulton County could adopt a comprehensive zoning plan for the county. Section 9 of that same Act, Section 9 having been later amended in 1968, provided the procedure for rezoning or the amendment of the zoning resolution of the county.

According to Section 9 (Ga. L. 1968, p. 3769) an application for rezoning must be filed with the planning commission "which shall proceed to hold a public hearing thereon after notice to interested parties, in accordance with the rules and regulations adopted by the authorities in charge of county affairs as a part of the zoning resolution."

Art. XXVIII, Sec. 3, Par. 2 of the Fulton County Zoning Resolution provides that the planning commission (Atlanta-Fulton County Joint Planning Board) shall hold "preliminary public hearings" on all rezoning applications and that notice of such preliminary hearing shall be given by placing a sign on the property sought to be rezoned and by mailing a notice of the hearing by regular mail to all property owners within three hundred feet of the subject property as their "ownership and address appear on the tax records of Fulton County."

It is thus seen that the only notice required to be given with respect to the preliminary public hearing before the planning commission is the posting of the sign on

the property and mailing a notice to specified property owners. For the preliminary hearing there is no requirement of notice by publication.

It is also significant, especially in relation to procedural due process and equal protection, that the planning commission has no authority to rezone property; the extent of the planning commission's power is to make recommendations to the governing authority; and the power to rezone property is vested totally and exclusively in the governing authority of the county under the law.

We therefore hold that defective notice or lack of notice of the preliminary hearing before the planning commission, which cannot rezone property so as to deprive a party of his property rights, is not violative of procedural due process or equal protection, provided such party has due and legal notice of the hearing on the matter of rezoning before the county governing authority, the body which can rezone land and thereby deprive a party of his property rights. Procedural due process is afforded if an affected party has an opportunity to be heard at any time before the rezoning decision is reached by the county governing authority.

We next looked to see what notice is required to be given for a rezoning hearing conducted by the governing authority. Section 9 of the statute (Ga. L. 1968, p. 3769) provides that notice of the hearing before the governing authority shall be published once a week for at least three weeks in the official county newspaper prior to the holding of the public hearing. Sec. 4 of Art. XXVIII of the county zoning resolution provides for exactly the same notice of the public hearing before the governing authority as is provided for in the statute. It is conceded that this notice by publication required by the statute and the zoning resolution was given.

We hold that such notice by publication of a rezoning hearing to be held by a governing authority of a county

is proper and adequate insofar as the requirements of procedural due process and equal protection are concerned. Such notice by publication puts all parties, wherever located, on notice that a public hearing will be held at the stated time and place before the governing authority which is considering an application to rezone land under the jurisdiction of the governing authority. We have held that such notice by publication is all that affected property owners are entitled to, and that their legal or constitutional rights are not violated by the rezoning of property when such notice by publication is given. See *Willingham v. White* 229 Ga. 75 (189 SE2d 442).

It follows that the notice given to the appellees in this case was not constitutionally deficient, and the trial court erred in holding that it was.

The appellees argue in this court that if the notice given was not constitutionally deficient, then there are still other issues to be decided in the trial court with respect to the validity of the rezoning action taken by the Board of Commissioners of Fulton County on June 7, 1972. These issues relate to the manner by which the Board of Commissioners reached its decision between the dates of May 3, 1972, through June 7, 1972.

These contentions of the appellees are without merit, because Sec. 9 of the statute (Ga. L. 1968, p. 3769) empowering the governing authority of Fulton County to rezone property provides that after the hearing before the governing authority on the proposed change, the governing authority "shall have the right to continue the hearing from day to day, or to a named day, or may withhold final action thereon pending further consideration and investigation on their part, ..."

It is thus seen that the governing authority of Fulton County is given by law absolute authority with respect to the rezoning of property within its jurisdiction.

Before a rezoning decision by it, it must properly advertise and hold a public hearing at which all interested citizens and property owners can make their views known to the governing authority with respect to the proposed rezoning decision. However, once that notice is given and that hearing is conducted before the governing authority, it then has almost unrestricted authority with respect to the time and manner in making its decision.

The flexibility of the procedure and the extent of the power conferred upon the governing authority to rezone land may be subject to criticism, but it is not illegal or unconstitutional.

Upon review of the entire record we find no legal infirmity in the rezoning action taken by the Board of Commissioners of Fulton County on June 7, 1972.

Judgment reversed. All the Justices concur.

ARGUED OCTOBER 11, 1972 — DECIDED FEBRUARY 8, 1973 — REHEARING DENIED FEBRUARY 22, 1973.

Injunction. Fulton Superior Court. Before Judge McKenzie.

Stack, O'Brien & Neely, Edgar A. Neely, III, David J. Keeler, for appellants.

Greene, Buckley, DeRieux & Jones, Ferdinand Buckley, Raymond H. Vizethann, Jr., for appellees.

Webb, Parker, Young & Ferguson, Robert G. Young, amicus curiae.

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SUPREME COURT OF GEORGIA

ATLANTA, February 22, 1973

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

F. P. Plaza, Inc., et al. v. Jordan C. Waite et al.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,

CLERK'S OFFICE, ATLANTA, March 29, 1973

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Hazel E. Thelford, Deputy CLERK.

ent No. 9.

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IN THE SUPERIOR COURT FOR THE COUNTY OF FULTON
STATE OF GEORGIA

JORDAN C. WAITE, NANCY F. WAITE, DEAN B. GOING, ROBIN GRAY, ALAN BURNHAM and all others similarly situated, Plaintiffs, -vs- GOODWYN (SHAG) CATES, CHARLIE BROWN and MILTON FARRIS (Members of the Fulton County Board of Commissioners of Roads and Revenues), EARL GARNER, (Director of Inspections and Licenses Department of Fulton County), F. P. PLAZA, INC. and ASA G. CANDLER V. and ROBERT S. GRIFFITH, JR., d/b/a CANDLER-GRIFFITH CO., Defendants.	CIVIL ACTION, FILE NUMBER B-75365

ORDER

The above styled matter came on for a hearing on June 2, 1972 on plaintiffs' motion for a temporary restraining order, at which time a partial restraint was entered and at request of counsel the hearing was continued until Thursday, June 8, 1972. Counsel then asked for additional time to complete the record and the Court thereafter on June 14, 1972 entered a detailed order which speaks for itself. Thereafter, counsel for all parties entered into a stipulations of fact, with pertinent exhibits attached, and asked the Court to allow them to submit the entire case for final disposition at the trial level. The Court agreed and on Friday, July 7, 1972, at 5:00 o'clock p. m., after extensive argument, the matter was submitted to the Court without

a jury for said final disposition.

The Court has given careful consideration to the evidence, the arguments and briefs of counsel, and now makes the following findings:

Article XXVIII, Section 3, Subparagraph 2 of the Fulton County Comprehensive Zoning Resolution, which sets requirements of publication and mailing of notice to affected property owners is in contravention of federal and Georgia constitutional requirements of "due process" and "equal protection of the laws" and is therefore unconstitutional and void.

In the enactment of zoning ordinances and amendments thereto the Fulton County Board of Commissioners is limited to the specific authority conferred by statute. (Morgan v. Thomas, 207 Ga. 660)

The Georgia laws do vest in said Commissioners broad powers to zone property but the law requires strict compliance with requirements of notice and hearings. These statutes require the Board of Commissioners, before making any modifications or amendment to the zoning resolutions, to hold public hearing, with prior notice thereof, to all interested parties. (Ga. L. 1939, p. 584; Ga. L. 1952, p. 2689; Ga. L. 1968, p. 3769; Code of Laws, Fulton County, Sec. 24-109)

The Supreme Court of this state has held repeatedly that "due process" of law as guaranteed by Article I, Sec. I, par. III, of the Constitution, Ga. Code Ann., Sec. 2-103, includes notice and hearing as a matter of right in matters where one's property

rights are involved. (Sikes v. Pierce, 212 Ga. 567; and cases cited therein)

There could seem to be no doubt that a zoning ordinance that does not provide for hearing and notice of hearing to all parties affected thereby is clearly in contravention of the constitutional requirements of due process and is therefore unconstitutional and void.

Since the applicable Georgia laws in this case require notice to all interested parties, notice requirements embodied in zoning ordinances enacted pursuant to such law must be strictly complied with in any zoning action taken by the governing authorities. Said Fulton County Zoning Resolution requirements for notice are invalid per se, as well as in the application to these plaintiffs, for the following reasons:

Article XXVIII, Secs. 3 and 4 of the Fulton County Comprehensive Zoning Resolution requires that written notice shall be given by regular mail to all property owners within three hundred (300) feet of the subject property; but said section then imposes the inconsistent limitation that said notice shall be mailed only to property owners as ownership and address appear on the tax records of Fulton County.

The evidence shows that the application of said requirements in general,and in this case in particular, require legal publication in Fulton County Daily Report only and that notice be mailed to all property owners within three hundred (300) feet of the subject property (but only as appears on the tax records of

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Fulton County). The plaintiffs, some of whom own land adjoining subject property, are residents of DeKalb County.

Such provisions are violative of the federal and Georgia Constitutions in that they deprive plaintiffs, and others similarly situated, of due process of law and the equal protection of the law, because said regulations require notice to Fulton County property owners by publication and by mailing, but require no notice by either publication or mail to residents and property owners located in DeKalb County immediately adjacent to Fulton County, and the subject property of the rezoning in this case.

The "Equal Protection of Law" clause of the Federal Constitution is offended whenever a public law is applied differently to different persons under similar circumstances. In other words, the constitutional guarantee of equal protection requires that all persons be treated alike under like circumstances and conditions.

The Court finds, both as a matter of fact and law, that plaintiffs were denied due process and equal protection under the applicable zoning regulations and the actions of the Board of Commissioners pursuant thereto.

IT IS THEREFORE ORDERED AND DECREED that said actions of the Board of Commissioners attempting to rezone subject property constitute an infringement on plaintiffs' property rights and are hereby declared void and of no force and effect.

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Any action taken pursuant to said attempt to rezone said property would constitute a clear and present danger of irreparable damage to plaintiffs' property and, therefore, defendants F. P. PLAZA, INC., ASA G. CANDLER V and ROBERT S. GRIFFITH, JR., d/b/a CANDLER-GRIFFITH CO. are permanently enjoined from instituting any action in non-conformity with the original R-2 zoning which, by reason of this ruling, now appertains.

IT IS SO ORDERED.

This 11th day of July, 1972.

JUDGE, SUPERIOR COURT, A. J. C.